

393, 819.) The client copy is “a copy...which the client needs to keep where they know everything that really goes into the FCC, or PCIA.” (Tr. at 392.)

76. When Pat and Ron arrived at Jim’s accounting firm, Norma was working in the reception area. (Tr. at 394.) Norma knew they were coming, and when they arrived, Pat and Ron opened the package up to show Norma the applications and the client copies, and to show her where to sign. (Tr. at 394.) The applications had the “little sticky notes” that said “sign here...” (Tr. at 819.) Norma then took the applications and the client copies into Jim’s office and showed them to Jim while Pat and Ron waited in the reception area. (Tr. at 394, 820.) Pat did not hear the conversation but saw that Norma “was showing [Jim the applications], and [Pat] assume[s] [Norma] was showing him where they needed to sign.” (Tr. at 820.) After a few minutes, “Norma waved us in and we went over to the table that’s in the other room...and that’s when Norma came over there, and spoke with us momentarily, and then Jim came over.” (Tr. at 395.) The table was “like a conference table” (Tr. at 820.) The applications and client copies were left on Jim’s desk. (Tr. at 396.) Jim “[c]ame over to the desk, and [Pat, Ron, Norma and Jim] discussed whatever the other [business] that [they] had gone in there for....” (Tr. at 820.) Ron does not recall either he or Pat discussing the applications and client copies with Jim at that time. (Tr. at 396.) Ron believes that “[Jim] never brought it up and [Ron and Pat] didn’t either.” (Tr. at 396.) Pat thinks that Ron may have mentioned to Jim that Pat and Ron had brought the applications over and “Jim said yes...I looked at them.” (Tr. at 821.) When Pat, Ron, Norma and Jim finished discussing other Metroplex business, Norma, Pat and Ron went outside and “Norma told [Pat and Ron] that [Norma and Jim] would see [Melissa and

78. Following his review of the applications, Ron reviewed the Sumpters' client copies and noticed that the client copies were not signed. (Tr. at 399, 823.) He put the "original applications into...a package to be mailed, or FedEx." (Tr. at 399.) Ron then told Norma that he and Pat needed copies of the signed client copies. (Tr. at 399, 824-825.) Norma said that she would be over Saturday because "it was a scheduled time, schedule for them is almost every weekend or every other weekend to come by and see Pat." (Tr. at 399.) It was "custom practice" for Norma and Pat to go shopping together every Saturday. (Tr. at 1073.)
79. Pat and Ron left the envelope containing the client copies with Norma, and then left Jim's office with the applications. (Tr. at 403.) While at Jim's office, Pat and Ron had spoken only to Norma. (Tr. at 402.) Because the FedEx office, or the post office, was only about three blocks from Jim's office, Pat and Ron physically took the package with the applications there and shipped the package to PCIA. (Tr. at 400-401, 403.) The "prep and application and coordination fees to have the applications submitted" were all paid for by the Brasher checking account because "[t]hat's the way Sumpters' accounting set it up to be." (Tr. at 103-104.)
80. On June 18, 1996, Ms. Lutz signed her application for a T-band license. (Tr. at 460; EB Ex. 57.) Ms. Lutz's "actions in signing the license application were voluntary and...[her] employment was not conditioned upon that." (Tr. at 1168.)
81. In June 1996, relying on the 1992 Power of Attorney and his belief that he was the executor of O.C.'s estate (Tr. at 278, 574.), Ron executed and refiled O.C.'s application (hereinafter "O.C.'s 1996 application"). (EB Ex. 3.) Because "the license was applied

months before [O.C.] died and it was in the...PCIA system...and it should have been issued,” Ron applied for the station in O.C.’s name using the “same frequency and everything” after O.C. had passed away. (Tr. at 580.) Ron believed the station was part of O.C.’s estate even though it hadn’t been granted before O.C. died because, “it was [O.C.’s] desire and intent, to have a station. And that’s what the first one, the original application, was applied for....That’s what [O.C.] wanted when he was alive. He knew a lot about this radio stuff with us because he lived with us.” (Tr. at 581.)

82. Ron informed the FCC of O.C.’s passing via the Form 800A Verification of Completion of Construction for O.C.’s station by signing the form “Est. of O.C. Brasher”, dated December 9, 1997. (RB/PB Ex.3.)

83. Also on June 18, 1996, Ron sent an application in the name of Ruth Bearden to PCIA for a license on the T-band in Allen, Texas. Ron had Mr. Black prepare the application in Ruth’s name, using Ron’s address of 224 Molina Drive, Sunnyvale, Texas. (Tr. at 161; EB Ex. 9 at 3.) Ruth’s brother, Ed Bearden (hereinafter “Ed”), asked Ron to apply for the license so Ed could use it in conjunction with his sand and gravel hauling business. (Tr. at 174.) Ed was convicted of a felony in the 1930s, and therefore Ron believed that Ed could not apply for a license in his own name. (Tr. at 175.) At that time, Ron also did not believe that Ron was eligible to apply for another license in his own name at that location. (Tr. at 175.) Ron signed Ruth’s name to Ruth’s application on June 18, 1996. (Tr. at 149-150, 2304; EB Ex. 9 at 4.)

84. When Ed asked Ron to apply for a license, Ed’s sand and gravel business had approximately eight (8) trucks. (Tr. at 178.) Ruth’s application contained a clerical error

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84. When Ed asked Ron to apply for a license, Ed’s sand and gravel business had approximately eight (8) trucks. (Tr. at 178.) Ruth’s application contained a clerical error

requesting ninety (90) mobile units. (Tr. at 178-179; EB Ex. 9 at 8.) Ron noticed the error and changed the client copy of Ruth's application to request ten mobile units instead. (Tr. at 178; EB Ex. 14 at 9.) Ron believed he had also changed the original copy of Ruth's application to request ten mobile units. (Tr. at 162, 178.)

85. On Saturday, June 22, 1996, Norma, Jennifer and Melissa went to Pat and Ron's house for their weekly shopping trip, and Norma also brought the unsigned client copies of the Sumpters' license applications. (Tr. at 403-404, 826.) At that time, "Jennifer was interested because [Ron] was working on a kitchen...table. [Ron] had bought a new kitchen table and [Ron] repaired this one for her to be used in her home, and after she got married, and they were interested in seeing the progress on that table and chairs. So...[Norma, Jennifer, and Melissa] had kind of a dual reason to come by." (Tr. at 399.) Jennifer remembers being at Pat and Ron's house, looking at the progress Ron was making on refinishing the table, but she claims that she was given the table in late 1995 for use in her one bedroom apartment. (Tr. at 1080.) In May of 1996, however, Jennifer and her new husband had just moved into a new apartment (Tr. at 1080.) after approximately seven months of marriage. (Tr. at 1120-1121.) In addition, Ron had recently purchased a new kitchen table, which allowed him to repair the old table and chairs to give to Jennifer and her new husband. (Tr. at 399, 1080.)

86. On June 22, 1996, Norma, Jennifer and Melissa sat down at Pat and Ron's kitchen table and spread out Jim's, Norma's, Jennifer's and Melissa's client copies on the table. (Tr. at 404-405, 826.) Pat and Ron watched Norma sign her application (Tr. at 405, 826), and Ron then "took Jim's and Norma's [applications] and when [Ron] was going to [make a

photocopy] for [Pat and Ron], [Ron] noticed Norma did not date hers, so [he] whipped back around, and the girls had just about finished up signing theirs, and [he] mentioned to Norma that she had not put the date on it. So she put the date on it, and...[Ron] think[s] she put the date on the others also.” (Tr. at 405, 826.) Ron saw Norma date the client copies 6/22/96, which was “a different date...than she would have put on the original.” (Tr. at 405-406.) Ron and Pat witnessed Melissa and Jennifer signing the client copies. (Tr. at 408-409, 826.) Norma’s (EB Ex. 19 at 200.), Jennifer’s (EB Ex. 19 at 208.) and Melissa’s (EB Ex. 19 at 216.) signatures on their applications look like their own handwriting. (Tr. at 1888.) Ms. Bolsover believes it is probable that Norma, Jennifer and Melissa each wrote their own signatures on the client copies and that there was nothing to suggest the signatures were traced. (Tr. at 2326-2327, 2335-2336.)

87. At approximately the same time the Sumpters applied for their licenses, David applied for his own licenses, and he “looked at it...as an asset for [his] own estate.” (Tr. at 933.) He also “saw the value towards [Metroplex], looking toward [his] own future of eventually joining it.” (Tr. at 933.) He “had already begun to contemplate that he would go to work full time at DLB Enterprises.” (Tr. at 997.) That was “his goal and Ron’s goal.” (Tr. at 997.) He applied for one license in his name and one license as “D.L.” because he was having “marital problems” with his wife and “wanted to at least have one license that wouldn’t be onto the estate of David and Diane.” (Tr. at 1035.)

88. In July of 1996, Ed informed Ron that the sand and gravel business for which he needed the radio license no longer existed. (Tr. at 180.) Ron attempted to cancel the coordination of the application so that no application would ever be submitted to the FCC. (Tr. at 180-

181.) Ron “called PCIA to get the...frequency advisory number....Then [he] asked that the [application] be cancelled. They said send a letter...and they told [him] exactly who to send it to. And [he] typed up the letter. [He] faxed it and then mailed the letter too.” (Tr. at 180-181, 183.) The letter requesting cancellation of Ruth’s application and the accompanying fax cover sheet were addressed to Dawn Daniels (hereinafter “Ms. Daniels”) from Ron and were dated July 30, 1996. (Tr. at 181; EB Ex. 14.) There was no evidence proffered to show that PCIA told Ron that the application had already been forwarded to the FCC.

89. In the Summer of 1996, Jennifer received a “little card” from PCIA. (Tr. at 1054.) According to Jennifer, “[t]he only thing I remember getting in the mail was the little card...and I remember passing that on.” (Tr. at 1054, 1085.) PCIA sends cards to their “dealers and customers when [PCIA] receive[s] applications and then when [PCIA] forward[s] them to the FCC.” (Tr. at 2288.) One card is printed on yellow paper and acknowledges that PCIA has received the license application, lists a control number for the license application, and informs the applicant that PCIA will mail the applicant a notice when the license application is filed with the FCC. (RB/PB Ex. 10.) Another card is printed on green paper and lists the dates PCIA received the application, coordinated the application, and filed the application. (RB/PB Ex. 11.) The card also informs the “radio license applicant” that PCIA has “reviewed, certified, and filed [the] license application with the Federal Communications Commission....” (RB/PB Ex. 11.) The cards generally are “an overnight process...printed out the...next business day after coordination had been completed and then...mailed within the first couple of days.” (Tr. at 2289.) PCIA then

files “applications with the FCC within three business days of the date of coordination.”

(Tr. at 2289.) Jennifer passed the card to Norma to give to Pat and Ron. (Tr. at 1054,

1085.) Norma “would at least see them monthly when they were doing the accounting.”

(Tr. at 1054, 1085.) Jennifer called Pat when she received the card and said, “I got a card.

Do you want me to mail it to you, back to you, so you’ll know I’ve got it, or can I just

give it to Mom....and [Pat] said well, just give it to your mother when you see her.” (Tr. at

827.) Jennifer gave the card to Norma to give to Ron, because she knew her “mother was

getting mail from the FCC” and because “it was knowledge in [her] family that the FCC

was [Ron’s] business or dealt with [Ron’s] business.” (Tr. at 1056.) Jennifer was not

surprised that “there was an application involving [her] name.” (Tr. at 1117.)

90. Norma also received green and yellow cards from PCIA that she passed on to Ron. (Tr. at 2075, 2123, 2146.) Norma told Pat that she and Jim had received their cards. (Tr. at 827.)

91. On September 9, 1996, Business Radio Licensing sent Jennifer a letter at 4312 Gus Thomasson Road, addressed to “Licensee,” informing Jennifer that their “reviews of the FCC records indicate that you or your company have recently applied for or has been granted an FCC license to operate a communications system.” (Tr., 1087-1088; RB/PB Ex. 4.) In the letter, Business Radio Licensing also offers to sell Jennifer a copy of Part 90 of the FCC Rules and Regulations. (RB/PB Ex. 4.) Because Ron does not have access to Jennifer’s mailbox, the only way he could have received Jennifer’s letter from Business Radio Licensing was if Jennifer had caused it to be forwarded to Ron. (Tr. at 1090.)

92. On September 25, 1996, unbeknownst to Ron, and despite his efforts to stop the coordination of Ruth's application, the FCC issued a license for use of a T-band channel with the call sign WPJR762 in Ruth's name for operation at Allen, Texas. (EB Exh. 10.) Ron never received correspondence from the FCC regarding an application or license for station WPJR762. (Tr. at 186-187.) Ron had "never...seen a card, a PCIA card, never seen a license, and...never seen a cancellation notice." (Tr. at 186-187.) Ron never constructed the station authorized under call sign WPJR762. (Tr. at 116.)
93. Also on September 25, 1996, the FCC granted a license for a T-band channel under call sign WPJR763 to Ms. Lutz for operation in Allen, Texas. Ms. Lutz received the granted license from the FCC, gave Ron the original license, and kept a copy of the license for herself. (Tr. at 1171.) Ms. Lutz subsequently had two-way radio equipment installed in her vehicle, as per her compensation agreement with Metroplex for the use of her station, although two-way radio equipment was never installed in any her husband's or daughters' cars. (Tr. at 469-470, 1590.)
94. Also on September 25, 1996, the FCC granted a license for a T-band channel under call sign WPJR725 to Jim for operation in Allen, Texas. (Tr. at 1761; EB Ex. 33.)
95. Also on September 25, 1996, the FCC granted a license for a T-band channel under call sign WPJR740 to Jennifer for operation in Allen, Texas. (Tr. at 1052; EB Ex. 55 at 18.)
96. Also on September 25, 1996, the FCC granted a license for a T-band channel under call sign WPJR739 to Norma for operation in Allen, Texas. (EB Ex. 45.) When Norma received her license from the FCC, "she called and told Pat that she had the license, and...Pat told her to put it in with the mail, the stuff that [Pat and Ron were] going to be

picking up, or [have it] sent to [them]....” (Tr. at 420, 828.) Norma told Pat that they received Jim’s, Norma’s and Jennifer’s licenses, and Pat told Norma “to make copies and send [Metroplex] copies because [it] need[ed] to post [the copies], and [Metroplex] would make copies...to keep in [its] files.” (Tr. at 828.) Although Pat does not remember Norma mentioning that she had received Melissa’s license, Melissa’s license was not granted until October 2, 1996, and therefore Melissa would have been the last Sumpter to receive her license. (Tr. at 829; EB Ex. 52 at 14.) Norma subsequently forwarded copies of the Sumpters’ licenses to Pat and Ron. (Tr. at 422, 828.) As with other FCC mailings pertaining to the Sumpters’ FCC licenses, Norma would “always let [Pat] know ahead of time how she wanted it to be handled” and Norma would then forward a copy of the FCC mailings “in [her] monthly or twice a month mailings back and forth for the work itself”, in the pouch from Jim’s accounting firm. (Tr. at 535-536.)

97. On October 2, 1996, the FCC issued a license for a T-band channel under call sign WPJS437 to Melissa for operation at Allen, Texas. (Tr. at 1319-1320; EB Exh. 52 at 14.) At that time, Melissa was living at and attending school approximately a three hour drive away from Jim’s and Norma’s home. (Tr. at 1321-1322.)
98. In their T-band repeater manual, Metroplex maintained documents that indicate “the name of the customer, the address, the account number, and the amount of money that has been collected from their repeater service.” (Tr. at 1270; RB/PB Ex. 7.) When Ms. Lutz was working at Metroplex, any time she “added a customer to the system or changed what they had or whatever, this document was completed and put in a book,” therefore each customer on the T-band system was logged into the manual. (Tr. at 1270-1271.) These

documents kept track of the invoices that were sent to each customer, because when Metroplex “produced an invoice each month to mail to the customer, we logged it on this sheet of paper in the manual so that we would know that we had invoiced the customer and if we ever needed to go back and pull that invoice we would know what invoice number to go look for.” (Tr. at 1272.) These documents also keep track of how many systems and on what systems the customer was loaded, such as Dallas, Texas, Fort Worth, Texas or Allen, Texas. (Tr. at 1273.) These documents also listed the repeater frequency for the station used by each customer. (Tr. at 1274; RB/PB Ex. 7.) Therefore, because the invoice numbers are listed on the first page of this document, one can determine the amount of revenue collected from a customer for use of a specific frequency in a given location. (Tr. at 1274-1275.)

99. In 1997, Ms. Lutz had a two-way radio unit installed in her car. (Tr. at 1162.)
100. On or around February 7, 1997, Norma’s and Melissa’s stations were taken off of the air after Norma called Ms. Lutz and told her she wanted the stations “to be turned off”. (Tr. at 537.) Ms. Lutz then told Ron about Norma’s request and Ron called Norma to confirm her request. (Tr. at 537.) Norma “at that time instructed [Ron] to turn her station, Norma’s station, and Melissa’s station off” without providing an explanation of why she wanted those two stations taken off the air. (Tr. at 537-538.) Ron subsequently shut the stations off and neither station has been turned back on since then. (Tr. at 538.) Melissa denies that she requested her station be turned off. (Tr. at 1344.)
101. On April 1, 1997, David began working full-time for Metroplex. (Tr. at 611, 906.) Because of his position as an officer of the corporation, David had participated in

discussions about Metroplex business prior to going to work there full-time. (Tr. at 906-907.)

102. On November 14, 1997 (Tr. at 906.), Net Wave filed a Petition for Order to Show Cause (hereinafter the “Net Wave petition”) (EB Ex. 1.) with the FCC requesting the Wireless Telecommunications Bureau issue an Order to Show Cause as to “why the authorizations for the...470-512 MHz band facilities should not be revoked....” Jim testified that “we were a very close family up to that point.” (Tr. at 1793.)
103. The FCC sent a Form 800A to Jim, dated November 17, 1997, requesting verification of completion of construction for the station associated with call sign WPJR725. (EB Ex. 38.)
104. The FCC sent a Form 800A to Melissa, dated November 17, 1997, requesting verification of completion of construction for the station associated with call sign WPJS437. (EB Ex. 52 at 8.) The Form 800A was addressed to Melissa at 4008 Harbinger Drive, even though her permanent address was 4406 Harbinger Drive. (Tr. at 1321, 1325.) Even though it had been sent to the wrong address, Melissa admits to having received the 800A. (Tr. at 1325.) During her Thanksgiving break from school, Melissa reviewed the Form 800A, but she did not fill out or sign the Form 800A. (Tr. at 1326.)
105. The FCC sent a Form 800A to Jennifer, dated November 17, 1997, requesting verification of completion of construction for the station associated with call sign WPJR740. (EB Ex. 55 at 9.) Although Jennifer admits receiving the Form 800A, she claims she threw it out. (Tr. at 1061.) According to Jennifer, “I was angry. I felt like [Ron] was blowing me off. I had already talked to him – I had received the Net Wave [petition] first...and I felt like he

was blowing me off....” (Tr. at 1061.) Despite Jennifer’s claims that she disposed of the 800A, Ron filled in the construction information on the Form 800A and gave it to Jim to have Jennifer sign. (Tr. at 1061-1062.) Jennifer claims that she told her father she was “not going to sign it,” (Tr. at 1062), but Jim recalls “absolutely” instructing Jennifer not to sign it. (Tr. at 1966, 1978.)

106. On November 19, 1997, Pat received the Net Wave petition. (Tr. at 837; EB Ex. 1.)

107. According to Jim, when he received the Net Wave petition (Tr. at 1763, 1832.) at his office, he asked Norma if she had a radio license in the 1996 time frame, and she told him that she did not. (Tr. at 1836.) Jim also claims to have asked Norma if she signed an application for a license, and Norma said no. (Tr. at 1837.) Jim then asked Norma if she signed an application for a radio license for Jim, Melissa or Jennifer, and Norma said she had not signed an application for a radio license on behalf of any of the Sumpters. (Tr. at 1837-1838). After testifying that he had asked Norma if she had signed applications for Jim, Melissa or Jennifer, Jim subsequently attempted to recant his testimony. Jim states, “I don't believe I asked her, on second thought, that I -- I don't believe I asked her that she signed, if she signed anything. I knew she didn't sign it. I asked her if she had knowledge of it.” (Tr. at 1839.)

108. After reviewing the Net Wave petition, Jim “immediately called Ron....” (Tr. at 1763, 1832.) Jim said, “...what is this I got in the mail? It looks legal. It's got my name on it. It's got my children's name on it. It's got my wife's name on it. I don't understand it.” (Tr. at 1763.) In response, Ron told Jim that he would “take care of it” and not to worry about it. (Tr. at 1764.) Jim was “concerned about someone looking at [him] and saying

are you involved in something that's deceptive." (Tr. at 1891.) He was also "absolutely" concerned about the loss of his CPA license and the ability to continue to pursue his livelihood. (Tr. at 1891-1892.)

109. Norma received the Net Wave petition (EB Ex. 1.) at her home at 4406 Harbinger Drive, even though it was addressed to 4008 Harbinger Drive. (Tr. at 1833, 2028.) Upon reviewing the contents of the Net Wave petition, Norma became concerned that she might get sent to jail. (Tr. at 2201.) She and Jim discussed Jim's fear that he would somehow lose his CPA license and therefore, the family income. (Tr. at 2201.)
110. Prior to receiving the Net Wave petition, Jim received mailings from the FCC at his office. (Tr. at 1846.)
111. When Jennifer received the Net Wave petition, she was scared and "fearful that she could perhaps lose [her] CPA license." (Tr. at 1099, 1103, 2201.) Jennifer also "came out and expressed concern of being fined...." (Tr. at 1366.) Jennifer believes that she could have a fine of \$85,000 levied against her. (Tr. at 1101.) She discussed the Net Wave petition with Jim and Norma, and Jim also "expressed concern about losing his CPA license." (Tr. at 696, 1100, 1367.) Although Melissa did not have her RN license at the time the Sumpters received the Net Wave petition, after Melissa did get her license 1998, Jim "brought to [Melissa's] attention" the fact that she is in some danger of losing her RN license because of the allegations contained within the Net Wave petition. (Tr. at 1100-1101, 1367, 2201.) The entire time that Melissa has been an RN, she has been concerned that she would lose her RN license. (Tr. at 969, 1367-1368.) Jennifer is "still concerned that [she] could possibly lose [her] CPA license and be fined." (Tr. at 1102.)

112. Upon reviewing the contents of the Net Wave petition, David determined that Net Wave accused Metroplex of running “an illegal system” and that Metroplex “had a T-band system up and operating under multiple names.” (Tr. at 1009.) Metroplex, however, never made any attempt to conceal its use of multiple names and that information was available to the public. (Tr. at 1011, 1696-1697.)
113. On November 23, 1997, Ron faxed Jim a copy of a draft Opposition to the Net Wave petition and a letter sent to Ron from his attorney, Curt Brown, asking Ron to review the draft and comment on it. (Tr. at 1767, 1860; EB Ex. 37 at 15.) Jim believed Ron was faxing it to him “to relieve [Jim’s] anxiety about this situation, that [Ron] was going to take care of it.” (Tr. at 1767.) Jim claims that he “read it, but not line by line.” (Tr. at 1850.) Jim also claims that although he did not understand what he was reading, Jim did not ask any questions about the draft Opposition. (Tr. at 1851.) Jim did not care how Ron took care of the allegations raised in the Net Wave petition, as long as Ron took care of addressing those allegations, and “if this opposition would take care of it, [Jim] was just as happy to have Ron do it and file it.” (Tr. at 1854.) Jim never told Ron he did not want Ron to address those allegations on his behalf or that Jim would respond on his own behalf, Jim just “wanted it done.” (Tr. at 1854-1855.) Norma also reviewed the fax from Ron and she “had every opportunity to do whatever [she] wanted to with this document.” (Tr. at 2187.)
114. On behalf of the defendants and all associated family member licensees, an Opposition to the Net Wave petition was filed with the Commission on November 25, 1997. (EB Ex. 2.) Within this voluntary response, respondents admitted that each of the stations were owned

by members of the family and were used together to form a system to serve the greater Dallas market area. (EB Ex. 2.) The Opposition denied that Net Wave had demonstrated any violation of Commission rules in the use of multiple family members to accomplish its filing efforts. (EB Ex. 2.)

115. On or around November 27, 1997, after she got home from school for Thanksgiving break, Melissa discussed the Net Wave petition with Jim. (Tr. at 1354-1355.) When Net Wave's attorney mailed the Net Wave petition to Melissa, it was sent to 4008 Harbinger Drive, rather than 4406 Harbinger Drive. (Tr. at 1377.) Again, despite the fact that it was sent to the wrong address, Melissa still received the petition. (Tr. at 1321, 1377; EB Ex. 1.) She remembers "talking about it listing [the Sumpters] as parties and making [them] sound like crooks." (Tr. at 1355.) Melissa did not completely understand the Net Wave petition when she read it, so Jim "might have explained parts to [her] that [she] might have asked him...." (Tr. at 1355) When she first saw the Net Wave petition, Melissa claims to have lacked any recollection of ever having signed an application for an FCC license back in the early 1990s. (Tr. at 1356.) Melissa "didn't make a connection with what [she] was looking at as to what [she] had signed for [her] Aunt Patsy in the early '90s....[She] didn't make the connection with that when [she] first saw the [Net Wave petition]" (Tr. at 1358.)

116. On November 28, 1997, Mr. Lewis was issued an end user license under the call sign WPIR456 for operation on the 900 MHz system. (Tr. at 516 and EB Ex. 65.) This license was never utilized by Metroplex. (Tr. at 509.) The license did not fulfill any necessity

Metroplex had on the 900 MHz system and it was unrelated to the T-band system in Allen, Texas. (Tr. at 516.)

117. Jim drafted and mailed a letter, dated November 29, 1997, to Pat and Ron asking them to “please remove his name from the channel.” (Tr. at 1771; EB Ex. 39.)
118. Jim drafted and mailed a letter, dated November 29, 1997, from Norma to Pat and Ron asking them to “please remove [Norma’s] name from the channel.” (Tr. at 2051; EB Ex. 47.) This letter was signed by Norma. (Tr. at 2051.)
119. While at Jim’s and Norma’s residence, Melissa signed a letter, dated November 29, 1997, to Pat and Ron, prepared by Jim earlier that same day, asking to “please remove [Melissa’s] name from the channel.” (Tr. at 1347, 1371, 1382-1383; EB Ex. 53.) Melissa’s letter also states, “I know that you had used my name but I understood that if a channel was awarded then you would immediately transfer it to your name.” (Tr. at 1347, 1371; EB Ex. 53.) Jim then mailed the letter to Pat and Ron. (Tr. at 1384.)
120. Jennifer drafted and signed a letter to Pat and Ron, dated November 29, 1997, asking them to please remove Jennifer’s name from the channel and to not use her name or her husband’s name in the future. (Tr. at 1064; EB Ex. 56.) Jennifer reviewed a similar letter authored by Jim, and Jennifer “copied it or change[d] it to reflect [her situation].” (Tr. at 1098-1099.) Jennifer’s letter also states, “I know that you had used my name but I understood that if a channel was awarded then you would immediately transfer it to your name.” (EB Ex. 56.) Jennifer testified that following this correspondence, the Sumpters were advised by counsel to cease “family relations” with the Brashers. (TR 1109).

121. Ms. Lutz signed a Form 800A, dated December 8, 1997, for her license under call sign WPJR763, indicating that the station was constructed on May 6, 1997 and that 90 mobile units were placed into operation by the construction deadline. (Tr. at 467, 1171-1172; EB Ex. 60.) Ron testified that Ms. Lutz filled out the Form 800A herself (Tr. at 467), but Ms. Lutz states that she does not “remember filling it in, but I could have done it. I typed a lot of things. I may have typed this.” (Tr. at 1171.)
122. Ron executed a Form 800A, dated December 9, 1997, regarding O.C.’s station associated with call sign WPJR761, on behalf of O.C.’s estate. (Tr. at 591-592; RB/PB Exh. 3.) The 800A indicated that O.C.’s station began operation on April 26, 1997 and that 90 mobile units were placed into operation by the construction deadline. (RD/PB Ex. 3.) The signature on the Form 800A reads “O.C. Brasher EST. R.D. Brasher,” to indicate that the form was being executed on behalf of the estate of O.C. Brasher. (Tr. at 632, RD/PB Exh. 3.) Ron then returned the Form 800A to the FCC on December 9, 1997 or “right after that date.” (Tr. at 592.)
123. On December 16, 1997, Ron came to Jim’s accounting office with one Form 800A each for Jim, Norma, Melissa and Jennifer. (Tr. at 2062-2063.) Ron gave the four forms to Norma, who was sitting at the front desk, and informed her that the forms had to be signed in order for the licenses to be transferred out of the Sumpters’ names. (Tr. at 2062-2063.) Norma returned Melissa’s and Jennifer’s forms to Ron and told him that “the girls weren’t there, so they couldn’t sign them.” (Tr. at 2063.) Norma filled out and signed a Form 800A for her license with call sign WPJR739 (EB Ex. 46.), indicating the station was constructed on February 6, 1997 and that 90 mobile units were placed into operation

by the construction deadline. (Tr. at 2064.) She then took Jim's form to him in his office. (Tr. at 2063.) Jim came out to the front desk area and spoke with Ron about the forms. (Tr. at 2064.) Ron told Jim that the Sumpters "had to sign [the forms] to get the transfers through." (Tr. at 2064, 2192.) Jim then filled out and signed a Form 800A for his license with call sign WPJR725 (EB Ex. 38.), indicating that the station was constructed on February 6, 1997 and that 90 mobile units were placed into operation by the construction deadline. (Tr. at 414-415, 1772.) Norma understood that there were other documents, in addition to the Form 800A, that needed to be signed in order to complete the transfer. (Tr. at 2192.)

124. Jim drafted and sent a letter, dated December 20, 1997, to Pat and Ron stating that Jim had "signed the letter from the FCC dated 11-17-97" and asking Ron to transfer the license out of Jim's name within 90 days. (Tr. at 1773; EB Ex. 40.) Jim's letter also states, "[m]y application for a license was your idea and strictly for your benefit," but nowhere in the letter does Jim state that he did not apply for the license. (Tr. at 1873; EB Ex. 40.) Jim also had conversations with Ron where he asked Ron to "transfer [the license] out of my name" and Ron said "I'll do it." (Tr. at 1774-1775.) It is Ron's testimony that he never received this letter from Jim. (Tr. at 439-440.)
125. Norma also sent a letter, dated December 20, 1997, drafted by Jim, to Pat and Ron stating that Norma "signed the letter from the FCC dated 11-17-97" and asking Ron to transfer the license from her name within 90 days. (Tr. at 2066-2067; EB Ex. 48.) It is Ron's testimony that he never received this letter from Norma. (Tr. at 439-440.)

126. In 1998, Ron presented a written management agreement (EB Ex. 62.) regarding the management of Ms. Lutz's station associated with call sign WPJR763 to Ms. Lutz "to review and to sign and to give back to us." (Tr. at 472.) Ms. Lutz told Diane that she was "insulted" that she had to sign a management agreement. (Tr. at 1613.) Ms. Lutz "took the management agreement home and read it overnight and...brought it back to him...the next day or the day after that." (Tr. at 1189.) Ms. Lutz told Ron that she did not wish to sign the management agreement because "it [made her] responsible for things that [she didn't] have any business being responsible for." (Tr. at 1261.) Ron told Ms. Lutz that he "really needed" a management agreement with her and she should "go back and type one up that [she] could agree with and bring it back to [him] and let [him] look at it." (Tr. at 1261.) Ms. Lutz then attempted to negotiate the terms of a management agreement (EB Ex. 62.) by presenting a counteroffer because, "[s]he wanted to keep full authority of FCC rules in her hands. She wanted to have an increase in...salary, increase in vacation time, and a lot of other little rules that she wanted and also additional type of money, so much per profit and everything else, per each year." (Tr. at 473, 527-528; RB/PB Ex. 1.) Ms. Lutz demanded in her counteroffer "that [she] would receive certain amounts of money for him being the agent and managing [her] station, he would pay [her] a certain amount of money, and also that he would give [her] an extra week of vacation in here." (Tr. at 1197.) Ron took the counteroffer back from Ms. Lutz, "told [her] that he would look at it, read it over, and get back to [her]," but Ron never did. (Tr. at 1198.) Neither Ms. Lutz nor Ron ever signed Ms. Lutz's counteroffer. (Tr. at 529, 1189.)

127. Ron sent a letter, dated January 6, 1998, to Jim stating that it was “difficult” for Pat and him to understand how Jim “only recently became aware” that he was the “legal owner of a radio license.” (EB Ex. 37 at 27.) The letter also states that Jim “signed a request for license in July, 1996 at [Jim’s] office with Norma...Pat...and [Ron] present.” (EB Ex. 37 at 27.) Ron also stated the he has “commenced removing [Jim’s] name from [his] assigned license.” (EB Ex. 37 at 27.)
128. Ron sent a letter, dated January 6, 1998, to Melissa stating that it was “difficult” for Pat and him to understand how Melissa “only recently became aware” that she was the “legal owner of a radio license.” (EB Ex. 26.) The letter also stated that Melissa “signed a request for license in July, 1996 at [Pat and Ron’s] house in the presence of Jennifer Hill, Norma Sumpter, Pat Brasher and [Ron].” (EB Ex. 26.) Ron also stated the he has “commenced removing [Melissa’s] name from [her] assigned license.” (EB Ex. 26.) Melissa admitted to having received and read this letter, but she did not respond to Ron’s correspondence. (Tr. at 1426-1427.)
129. Ron sent a letter, dated January 6, 1998, to Norma stating that it was “difficult” for Pat and him to understand how Norma “only recently became aware” that she was the “legal owner of a radio license.” (EB Ex. 34 at 28.) The letter also stated that Norma “signed a request for license in July, 1996 at [Jim’s] office with Jim Sumpter, Pat Brasher and [Ron] present.” (EB Ex. 34 at 28.) Ron also stated the he has “commenced removing [Norma’s] name from [his] assigned license.” (EB Ex. 34 at 28.) Norma claims she never received this letter, however she did read the letter Ron sent to Jim on January 6, 1998. (Tr. at 2193.) In the Spring of 1998, Norma executed the face of an FCC Form 574 under a

statement written by Jim which stated that she no longer held the license for station WPCF910. (Tr. at 2155-56.)

130. After the Net Wave petition was filed, Ms. Lutz “asked that the license be taken out of [her] name.” (Tr. at 1173.) It was the “first thing [she] heard about any problem with the license” and it “scared” her. (Tr. at 1239.) Ms. Lutz believed “at the very least [she] could lose the license...could be fined...could go to jail...” (Tr. at 1239.) On January 26, 1998, Ms. Lutz signed an Assignment of Authorization, assigning Ms. Lutz’s license with call sign WPJR763 to Metroplex. (Tr. at 467-468; EB Ex. 20 at 15; EB Ex. 61.)
131. During the time Ms. Lutz was an FCC license holder of a license for call sign WPJR763, Ms. Lutz had access to the tower site where her station was located. (Tr. at 474.) Ron testified that Ms. Lutz was able to enter the blockhouse, if she so desired, because she knew where to look up the combination to the blockhouse. (Tr. at 475.) Ron also testified that Ms. Lutz could have shut down her station at any time because the equipment in the blockhouse that pertained to her station was clearly labeled with her frequency number. (Tr. at 476-477.) Ron stated that Ms. Lutz could have entered the blockhouse and “pushed the off switch and turned it off.” (Tr. at 477.) Although Ms. Lutz never offered any direction to Ron “regarding who she wanted to work on matters pertaining to her station,” Ron testified she could have offered direction to the service manager, which she did as part of her duties at Metroplex. (Tr. at 477-478.) Although Ms. Lutz knew the station was in Allen, Texas, she claims that she did not have ultimate supervision or control over the license nor did she have “unlimited access” to the transmitting facility. (Tr. at 1193.) Ms. Lutz did not offer any testimony regarding whether she knew where to

look up the combination of the blockhouse so that she could have access to the tower site.

Ms. Lutz also did not offer any testimony that she believed she was unable to offer direction to Ron regarding who worked on matters pertaining to her station.

132. Although Ron would not give Ms. Lutz the combination to the blockhouse if she asked him for it today, Ms. Lutz still maintains control over the personnel who work on her station. (Tr. at 478-479.) Ms. Lutz “can hire anybody in the world to go up there and let them work in that station” and “there [are] probably seven or eight companies that’s got the same combination in there. If she called Champion and said go up there and cut my repeater off, Champion has the same combination....It’s a uniform combination, it’s not just for [Metroplex].” (Tr. at 479-480.)

133. In addition to Ms. Lutz, all the licensees had access to their stations and the repeater sites. (Tr. at 984-985.) It’s a “community site” and Metroplex does not “maintain or control their security and there [are] also multiple companies who have the ability to go into these sites as well.” (Tr. at 985.) One does not need access to the physical repeater in order to be in control of the station. (Tr. at 1005.) Stations can be turned off with a request. (Tr. at 1006.)

134. Ms. Lutz “actually did the T-band billing” and therefore, “[Ms. Lutz] would know the revenues.” (Tr. at 989.) Ms. Lutz saw the “payment checks when they came in” and her work duties included taking “the daily deposits which was generated from the billing.” (Tr. at 989.)

135. Metroplex is still managing and operating Ms. Lutz’s station under the terms of their verbal agreement. (Tr. at 474.) If Ms. Lutz “gives [Metroplex] directions as a license

holder,” Metroplex has an obligation to “take direction from Ms. Lutz regarding the operation of the station.” (Tr. at 481.) Metroplex pays the operational costs that are incurred as a result of managing Ms. Lutz’s station using the Brasher account to pay for the tower rents, and the Metroplex account to pay for the rest. (Tr. at 487.) The cost of the site rental for Ms. Lutz’s station is approximately \$400 a month and is paid to American Tower Corporation. (Tr. at 489.) The repeater is owned by Pat and Ron and is rented to Metroplex for use with Ms. Lutz’s station. (Tr. at 487.) Metroplex then “receives the monies that come in as a result of operation” of Ms. Lutz’ station. (Tr. at 487.) The monies received from operation of the Allen site are not enough to cover the expenses. From December 1996 through December 31, 2000, total revenue for the Allen Repeater was \$53,788, total expenses were \$155,847, for a net loss of \$102,059. (Tr. at 1462; RB/PB Ex. 8.) The Allen Repeater did not turn a net profit during any of those years. (Tr. at 1462.)

136. On January 26, 1998, Ron signed O.C.’s name to an application for assignment, seeking to assign O.C.’s license with call sign WPJR761 to Metroplex. (Tr. at 2304; EB Ex. 20 at 10.) Ron believes he has power of attorney over O.C.’s property, and therefore Ron believes he can sign on behalf of the estate of the late O.C. (Tr. at 325.)
137. On January 28, 1998, Jim signed an application for assignment, seeking to assign Jim’s license with call sign WPJR725 to Metroplex. (Tr. at 416, 1783 and EB Ex. 20 at 17.) Also on January 28, 1998, Jennifer (Tr. at 416-418, 1063, 1092; EB Ex. 20 at 16, EB Ex. 55 at 14.), Melissa (Tr. at 416-418, 1327-1328; EB Ex. 20 at 18, EB Ex. 52 at 10.) and Norma (Tr. at 416-418; EB Ex. 20 at 19.) each signed an application for assignment,

seeking to assign each of their licenses with call signs WPJR740, WPJS437, and WPJR739, respectively, to Metroplex. (Tr. at 416-418, 1063, 1092, 1327-1328 and EB Ex. 19; EB Ex. 20 at 16, 18, 19; EB Ex. 52; EB Ex. 55..) While Ron did not witness Jennifer nor Melissa signing the applications for assignments, he and Pat did witness Jim and Norma signing the applications for assignment in Jim's accounting office. (Tr. at 416-419.)

138. After the T-band licenses were granted to the Sumpters on or around September 25, 1996, the Sumpters routinely received accounting information regarding their stations. (Tr. at 424.) "Sumpter's accounting firm set up the books and controls, how the T-band information was coming through. [Metroplex] sent that every month to [Jim's accounting firm], and they had that accounting where they could see what happened to -- each customer has been added, the dates, the amount of monies, and with the books set up by the Sumpters, it would be very easy for them to deduct what was happening." (Tr. at 424-425.) Although the statements that were sent to Jim's accounting firm did not break down the revenue, expenses and profit by individual stations, the statements were broken down by sites, such as the Allen site. (Tr. at 425.) Jim admits knowing the repeater revenue, but denies that it was broken down by site. (Tr. at 1788-1789.) Jim also claims the profits and losses from the Allen site could not be determined from his records. (Tr. at 1910.) Ron testified that the Sumpters "had set up the book how to record all this to make the statements that come back to [Metroplex]. They knew exactly, if they key this document in, knew exactly where it goes to [Metroplex's] forms that they send back to [Metroplex]." (Tr. at 428.) Although Norma admits working with Metroplex's invoices

and breaking the invoices down into different categories such as “repeaters, sales, tax, wholesale [and] parts,” Norma denies having enough information to determine the gross revenues for a repeater. (Tr. at 2108-2109, 2111.)

139. After the T-band licenses were granted to the Sumpters on or around September 25, 1996, all of the Sumpters worked for Jim’s accounting firm at some point. Although she was employed elsewhere in 1997, Jennifer worked at Jim’s office in 1997 on “weekends and at different times.” (Tr. at 426.) Ron testified that he had seen Jennifer working at Jim’s office on a Saturday. (Tr. at 426.) Jennifer claims she only worked in Jim’s office from 1987 through August of 1994 (Tr. at 1046.), but she did not testify regarding working at Jim’s office during the 1997 time period. While Jennifer worked at Jim’s office, she “had awareness of [Metroplex’s] accounting records for the company as a whole.” (Tr. at 1051.) Melissa also worked there “doing paper work and filing and...working with....Norma.” (Tr. at 427.) Melissa “would type up things that [Jim] would want to mail and [she would] make a lot of copies...[She] filed...they’re the CPA laws, whatever they go by. You have to refile those things every year. And [she] would just run errands like to the bank and the post office.” (Tr. at 1313.) None of the Sumpters ever “received any revenues as a result of having these licenses,” however there was consideration given in the form of the forgiveness of debts. (Tr. at 433.) Norma had suggested that “their payment for...having these licenses was to pay off monies that...Jim owed...Metroplex.” (Tr. at 433.)

140. In early 1998, the Sumpters stopped communicating with Pat and Ron. (Tr. at 1861.)
141. The FCC sent a letter, dated March 31, 1998, to Melissa regarding her license for call sign WPJS437. (Tr. at 1329; EB Ex. 52 at 12.) This letter was addressed to 4008 Harbinger Drive (EB Ex. 52 at 12.), instead of 4406 Harbinger Drive, but Melissa acknowledged that she received the letter even given the error in the address. (Tr. at 1393.) The letter advised Melissa that her license was cancelled and her channels were taken back for reassignment because Melissa had not informed the FCC that the station had been constructed in a timely manner. (Tr. at 1330; EB Ex. 52 at 12.)
142. The FCC sent a letter, dated March 31, 1998, to Jennifer regarding her license for call sign WPJR740. (Tr. at 1062; EB Ex. 55 at 16.) The letter advised Jennifer that her license was cancelled and her channels were taken back for reassignment because Jennifer had not informed the FCC that the station had been constructed in a timely manner. (Tr. at 1062; EB Ex. 55.) Jennifer did not do anything with the letter, she “just kept it.” (Tr. at 1062.)
143. The FCC sent a letter, dated March 31, 1998, to Ruth regarding her license for call sign WPJR762. (EB Ex. 10 at 2.) The letter advised Ruth that her license was cancelled and her channels were taken back for reassignment because Ruth had not informed the FCC that the station had been constructed in a timely manner. (EB Ex. 10 at 2.)
144. In November of 1998, Ron retired from Metroplex. (Tr. at 956.) Subsequent to his retirement, although he stops by the office and runs errands on behalf of Metroplex, Ron has not participated in the day-to-day operations of Metroplex, has not participated in any financial decisions related to Metroplex, nor has he had anything to do with the management of any station or licenses managed by Metroplex. (Tr. at 482-487.) Ron has

curtailed “a large percent” of his responsibilities since his retirement. (Tr. at 530.) Since his retirement, Ron still comes by the office, refills the coke machines (Tr. at 973, 1563.), which is “his routine” (Tr. at 973), and “does some janitorial duties.” (Tr. at 1563.) Currently, Ron only goes to the office approximately two to three days week. (Tr. at 973, 1562.) Ms. Lutz, however, claims that after his retirement, Ron “still came to the office every day and he still gave orders to people and people would still do what he asked them to do.” (Tr. at 1142.) Ron continues to work on some Metroplex business, such as the FCC investigation and two other projects that are winding down, but is no longer consulted on large purchases or decisions. (Tr. at 975.) Instead, Ron is “advised” of the company’s decisions. (Tr. at 975.)

145. Mr. Black believes that managing radio stations is legal, and that he “has seen nothing in the FCC rules and regulations that specifically say that that cannot be done” and that station management is a fairly common industry practice. (Tr. at 1681-1683.) Mrs. Daniels of PCIA also stated that managing stations is permitted by the rules of the FCC and was “common in the industry as of 1995 and 1996.” (Tr. at 2280.)
146. On December 7, 1998, Metroplex responded to a Bureau inquiry dated November 9, 1998, providing answers to a series of questions posed by the Bureau regarding the operation of the subject stations. (EB Ex. 17.) In response to Question 1(a), a list of the managed facilities was provided, which list did not include the T-band station granted to Ruth Bearden. (EB Ex. 17 at 3.) Also, the response stated, “[t]here is no written agreement concerning management of the stations.” (EB Ex. 17 at 2.) The response attributes the duties of operation and maintenance of the facilities to either Metroplex or

Ron. (EB Ex. 17 at 3-5.) The response accurately reported that, “[n]one of the licensees of the Managed Stations makes any payments to Ron Brasher in connection with the Managed Stations, nor does Ron Brasher make any payments to the licensees of the Managed Stations.” (EB Ex. 17 at 4.) Inadvertent factual errors also occurred within the response, reflecting counsel’s then held belief that Diane was a licensee and that Ron was in charge of financial decisions. (EB Ex. 17 at 6.) In sum, however, the responses given accurately reflect the operation of the various radio facilities.

147. On April 5, 1999, Metroplex filed a response to the Bureau’s second inquiry dated March 4, 1999. (EB Ex. 19.) This response assisted in further clarifying the activities undertaken by the licensees, including those areas where little or no assistance was provided by some of the licensees. The response speaks to the “ability and willingness” of the licensees to participate in all relevant activities, including those persons employed by Metroplex and who participated on a daily basis in the operation of the subject stations. The response does, however, accurately state that the “Sumpters did not actively participate in the supervision of the facilities other than, presumably, reviewing all materials sent by DLB on a regular basis.” (EB Ex. 19 at 6.) Again, some inadvertent factual errors arose, such as whether licensees would ever be liable for loans from Metroplex. (EB Ex. 19 at 11.) Attached to the response was hundreds of pages of documents, including the client copies of the Sumpter applications, which were included for the purpose of being fully forthcoming with the contents of defendants’ license files.

(EB Ex. 19.) The submission was supplemented later on April 9, 1999 with documents that were submitted under a request for confidentiality.

148. On October 13, 1999, the FCC was notified that Ruth Bearden was deceased. (EB Ex. 21 at 3.) Prior to that, Ron did not “believe there was a need to say that this license was issued when she was dead since the [application] had been cancelled.” (Tr. at 199.) In July, 1996, Ron requested that PCIA stop the coordination of Ruth’s application so that it would not be submitted to the FCC for processing. (Tr. at 180-181, 183.) Furthermore, the FCC had sent a letter dated March 31, 1998, informing Ruth that her licenses for station WPJR762 had been cancelled. (EB Ex. 10 at 2.)
149. On October 13, 1999, Ron reiterated to the FCC O.C. Brasher was deceased. (EB Ex. 21 at 2.) Ron first notified the FCC of O.C.’s passing by his submission a Form 800A to the FCC, dated December 9, 1997, signed “O.C. Brasher EST. R.D. Brasher.” (RB/PB Ex. 3.) Ron intended that this signature indicate that Ron was signing on behalf of O.C.’s estate, thus serving notice to the FCC that O.C. was deceased. (Tr. at 632.)
150. On October 13, 1999, Schwaninger & Associates sent a letter to Gary Schonman of the FCC providing a signed Authorization of Representation by Carolyn Lutz and Carolyn Lutz’s responses to questions posed by the FCC regarding the matter of WB/ENF 98-0513, on behalf of, and signed by, Carolyn Lutz. (Tr. at 1252; RB/PB Ex. 6.)
151. On October 14, 1999, the defendants, among others, responded to an additional Bureau inquiry which was dated September 9, 1999. In response to the Bureau’s first direct inquiry regarding the status of O.C. Brasher and Ruth Bearden, the response informed the Bureau that both were deceased. An earlier notification in the form of that construction

information regarding O.C.'s T-band license had been filed with the Bureau nearly two years earlier. (RB/PB Ex. 3.) Although the series of statements provided by the defendants was, in large measure, accurate, two areas were not accurate. First, the existence of a second O.C. Brasher, Ron's brother, was not reflected in the responses. Second, Ron's motivation for having acted in preparing an application and subsequently to cancel the coordination of the Ruth Bearden application, was improperly portrayed. (EB Ex. 21 at 25.) The response comports more closely with the events regarding the Ruth Bearden 800 MHz license. Testimony at trial did resolve this problem, however, because Ron's testimony did include a full recitation of the facts regarding his preparation of the Ruth Bearden T-band application on behalf of his uncle, Ed Bearden. (Tr. at 174-175.)

152. On or about August 9, 2000, Mr. Lewis spoke with David regarding Mr. Lewis' renewal of his radio license with the call sign WPIR456. (Tr. at 700-701, 981.) Mr. Lewis expressed concern about renewing the license because his sister, Ms. Lutz, had told him not to sign the license renewal application. (Tr. at 701.) Ms. Lutz told Mr. Lewis that "she had signed a license for [Ron] and she had got herself in trouble over that." (Tr. at 728-729.) Mr. Lewis "told David [he] wanted them out of [his] name. [He] didn't want to sign them. [David] said well, go ahead and sign them, and I'll get them out of your name in six months." (Tr. at 701) David told Mr. Lewis he would "transfer it to another customer." (Tr. at 981.) Although Mr. Lewis was benefitting from the free use of the two-way radio unit in his vehicle, Metroplex does not benefit by keeping the end user license in Mr. Lewis' name and allowing him to use the 900 MHz radio system for free if there are other customers who would be willing to pay for such service. (Tr. at 734-735.)

Mr. Lewis's license "is a user's license to [Metroplex's] trunk[ed] 900 license...he has to have a license to operate those radios." (Tr. at 982, 1021.) David could have given him a two-way radio unit to operate on the T-band, which doesn't require an end user's license, but it wouldn't have met Mr. Lewis' needs as well as the two-way radio units operated on the 900 MHz system. (Tr. at 982-983.)

153. On August 11, 2000, Mr. Lewis applied for, and signed an application for renewal of, his license for call sign WPIR456. (Tr. at 688; EB Ex. 65 at 3.) Mr. Lewis wrote a check to the FCC for \$110.00. (Tr. at 509; EB Ex. 65 at 4.) Ron testified he did not reimburse Mr. Lewis for that \$110. (Tr. at 509, 517.) Mr. Lewis, however, claims that Ron gave him \$110.00 (Tr. at 688-689, 747.), five \$20 bills and one \$10 bill, for that as a business related expense. (Tr. at 688-689.)
154. On September 27, 2000, Ms. Lutz left Metroplex for the second time "because of this investigation." (Tr. at 1132-1133.) She "just didn't feel like she could continue to work there." (Tr. at 1133.) Ms. Lutz believes that Ron is a "user," a "manipulator," and that he "deserves to lose out in this situation." (Tr. at 1259.) Ms. Lutz is upset that she is involved in the situation and still believes the FCC can levy a fine against her and she still has a fear that they can send her to jail. (Tr. at 1260-1261.) Ms. Lutz "immediately assumes the worst about Ron Brasher." (Tr. at 1306.)
155. Approximately two or three days after Ms. Lutz resigned from Metroplex, she returned the two-way radio unit from her car to Metroplex at the company's request. (Tr. at 491-492, 1265.)

156. In preparation for their depositions, the Sumpters spent three to four hours as a group going over everybody's documents (Tr. at 1358-1359, 1892.) and "trying to remember...all the events that might have surrounded us at the time...." (Tr. at 1358-1359.) During the group recollection, the Sumpters each "individually told things that you could remember." (Tr. at 1359.) Jim led those group conversations. (Tr. at 1104.)
157. Following the initiation of this proceeding via the publication of the Hearing Designation Order, defendants have freely participated in discovery, including the provision of information at deposition commencing on November 28, 2000, (at which depositions Ron first related the facts and circumstances regarding the preparation and filing of the application on behalf of Ed Bearden); timely and complete responses to the Bureau's request for admissions; timely and complete responses to all interrogatories; and timely, to the extent possible, production of all requested documents, which included providing to the Bureau hundreds of pages of documents. No objection was lodged and forwarded to any question or request made by the Bureau. With the exception of the Ms. Bolsover's reports and some of John Black's correspondence, not one among the dozens of exhibits entered by the Bureau at trial, included a document which came from any source other than defendants.
158. Defendants freely participated at trial, answering all questions posed to the best of their ability and belief. Defendants provided assistance to the Court and, at times, to Bureau counsel to assure that the facts were properly placed on the record to reflect the entirety of the circumstances underlying this matter. When defendants simply could not recall, they would often offer the reason why such recollection was not possible at that time.

When Ron and Pat did not fully agree on certain facts, no attempt was made to explain away those differences in recollection. Instead, defendants provided, to the extent reasonably possible, independent testimony, which reflected both the passage of time and their respective duties, acts, memories and perceptions.

159. Based on the foregoing, defendants respectfully aver that each has been cooperative and forthcoming in the investigation of this matter, discovery requests made by the Bureau, and each's participation at trial.

PROPOSED CONCLUSIONS OF LAW

Nature of the Proceeding

160. This administrative proceeding, like all others, is not penal in nature. And despite the tenor of some of the allegations, *e.g.* forgery, the Court is not charged with a duty to determine whether criminal behavior occurred.¹ Rather, this proceeding is to determine whether those standards of conduct related to the licensing and operation of radio facilities have been shown to have not been met and, if not, what action should be ordered in recognition of those violations found. Since this proceeding is not penal in nature, then the actions ordered in recognition of any past violations should consider the likely conduct

¹ *In re Application of Charlotte L. Olive*, FCC 91-262, 6 FCC Rcd. 4993 (1991), (Memorandum Opinion and Order); *see also In re Applications of KQED*, 3 FCC Rcd. 2601 at para. 42 (1988) (hereinafter, "*KQED*").